

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CAPELLO *et al.*,

Plaintiffs,

v.

SELING, *et al.*,

Defendants.

Case No. C02-5242RBL

REPORT AND  
RECOMMENDATION  
REGARDING  
GARY YOUNG

**NOTED FOR:  
JULY 14<sup>th</sup>, 2006**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is a summary judgment motion filed by defendants. This Report and Recommendation deals only with the claims of Gary Young.

PROCEDURAL HISTORY

Defendants filed a large number of summary judgment motions during July of 2004. The dispositive motion cut off date was July 30<sup>th</sup>, 2004. (Dkt. # 195). The motions were supported by a general brief and declarations. (Dkt. # 229 and 230 through 242). On July 28<sup>th</sup>, 2004, defendants filed a memorandum specific to Mr. Young. (Dkt. # 340). The memorandum

1 and attached declarations addressed the mental health treatment available and issues specific to  
2 Mr. Young. (Dkt. # 340 and 341).

3 Plaintiffs filed a single response to all the summary judgment motions. (Dkt. # 404).  
4 While the court had authorized each plaintiff to file an over length brief, the court did not  
5 authorize the filing of this document which contained over one thousand pages of briefing and  
6 materials.

7 Plaintiff supports his response with a number of declarations. (Dkt. # 405 through 421).  
8 Plaintiff also submits his own declaration. (Dkt. # 408). Defendants reply and note that none of  
9 the information provided by plaintiff creates a genuine issue of material fact that implicates any  
10 named defendant in this action. (Dkt. # 386).

### 11 FACTS AND CLAIMS

12 This action is one in a series of legal actions regarding the Special Commitment Center  
13 (SCC). Plaintiffs challenge the mental health treatment provided and conditions of confinement.  
14 The plaintiffs are all persons confined for mental health treatment. The SCC is designed to treat  
15 persons whose mental abnormalities or personality disorders make them likely to engage in  
16 predatory acts of sexual violence. (Dkt. # 229, page 3).

17 For over a decade the SCC operated under federal oversight as a result of injunctions  
18 issued by the United States District Court in Seattle. In 1991 the court found conditions of  
19 confinement unconstitutional and found the mental health treatment offered inadequate. Turay  
20 v. Seling, C91-0664RSM. On June 19<sup>th</sup>, 2004 the court found the defendants in substantial  
21 compliance and lifted the injunctions with one exception. Turay v. Seling, C91-0664RSM (Dkt  
22 # 1906).

23 This plaintiff, Mr. Young, was first sent to the SCC as a pre-trial detainee in December  
24 of 2001. (Dkt. # 340, page 2). He was committed in July of 2003. (Dkt. # 408, page 2).

25 Mr. Young's Civil Commitment Evaluation diagnosis includes "Paraphilia Not  
26 Otherwise Specified , and Antisocial Personality Disorder. (Dkt. # 341, Declaration of Paul

1 Spizman, Attachment B, page 3). There are also a number of references to Mr. Young suffering  
2 from Post Traumatic Stress Disorder. (Dkt. # 341, Declaration of Paul Spizman, Attachment B,  
3 page 4).

4 Mr. Spizman, in his declaration, states that in his professional opinion the treatment  
5 available to plaintiff provides plaintiff with an opportunity to improve the conditions for which  
6 he is committed. (Dkt. # 341). The Plaintiff has not contradicted the factual representations or  
7 assertions made by defendants.

8 Mr. Young participated in treatment for one trimester in 2001 when he first arrived. He  
9 was placed in phase II because of prior treatment he had received. He withdrew his consent to  
10 treatment and has not participate in treatment since 2001. (Dkt. # 340, Exhibits 4 through 6).

11 Defendants' motion for summary judgement is very specific. Defendants seek summary  
12 judgment because the complaint does not "accurately represent each plaintiff's claims, and  
13 because **each plaintiff must demonstrate the merit of his own claims to go forward.**" (Dkt.  
14 # 229)(emphasis added). Defendants ask for summary judgment based on the Eleventh  
15 Amendment, qualified immunity, personal participation, and lack of a constitutional violation.  
16 (Dkt. # 229, pages 18 through 37). In essence, defendants argue that none of the plaintiffs can  
17 show an injury of constitutional magnitude specific to that plaintiff.

18 Plaintiff expresses his opinions regarding treatment at the SCC. Plaintiff provides no  
19 evidence to show the treatment offered him is inadequate. (Dkt. # 408). Plaintiff challenges the  
20 constitutionality of the treatment provided and his conditions of confinement but does not show  
21 that any named defendants played any part in any alleged violation.

22 Two of the named defendants, Lyle Quasim and Robert Smith left their employment at  
23 the SCC prior to plaintiffs arrival. Lyle Quasim left his position as Secretary of the Department  
24 of Social and Health Services in 2000. Dr. Smith left his position as Clinical Director at SCC in  
25 1999. (Dkt. # 340. Page 7).

26 In his deposition and declaration plaintiff argues staff and the administration give  
27

1 contradictory “feedback.” He complains he was forced to attend classes with people who were  
2 learning impaired and that movement controlled by the Department of Corrections interferes  
3 with treatment. He also complains of DOC oversight for visitors. (Dkt. # 340, page 3).

4 Plaintiff fails to implicate any named defendant

5 Defendants reply and note that Mr. Young’s opinion regarding the adequacy of  
6 treatment, unsupported by expert testimony, does not create a genuine issue of material fact.  
7 (Dkt. # 386). Defendants systematically address each issue raised by Mr. Young in either his  
8 declaration or his deposition and show there is no genuine issue of fact precluding summary  
9 judgment. (Dkt. # 391)

10 Defendants note:

11 Mr. Young provides no facts to show that defendants Gollogly or Seling  
12 personally participated in a constitutional violation. Defendants further have  
13 shown that defendants Quasim and Smith left their positions before Mr. Young  
14 arrived at the SCC. Declaration of Beverly Wilson ¶¶ 2, 5 (dkt. # 242); Young  
15 Dep. at 4 (dkt. #340, Ex. 9). Mr. Quasim and Dr. Smith, therefore, could not  
16 personally have participated in any alleged violation of Mr. Young’s rights. See  
17 Memorandum ¶ III.C.3. (dkt. #229). Accordingly, the Court should dismiss all  
18 claims as to the defendants in their personal capacities. *See Leer v. Murphy*, 844  
19 F.2d 628, 632-33 (9th Cir. 1988).

20 (Dkt. # 386, page 4 and 5).

21 Mr. Young provides no facts to show that defendants personally participated in a  
22 constitutional violation. Plaintiff places great weight on the findings of fact made in Turay v.  
23 Seling, and other cases without a showing that the findings apply to him. Thus, Mr. Young  
24 continues to argue this action in the abstract. By way of example, he argues damages are “best  
25 weighed by everyday spent without constitutionally adequate mental health treatment and more  
26 considerate conditions of confinement than prisoners.” (Dkt. # 404 page 6). Plaintiff has no  
27 evidence to support his assertions that the treatment offered him is in any way inadequate.  
28 Plaintiff’s response does not meet the requirement of a specific evidentiary showing. Further,  
29 plaintiff fails to show that any named defendant played any part in the alleged constitutional  
30 violations.

THE STANDARD

Pursuant to Fed. R. Civ. P. 56 (c), the court may grant summary judgment “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 (c). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of a claim on which the nonmoving party has the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1985).

There is no genuine issue of fact for trial where the record, taken as a whole, could not lead a rational trier of fact to find for the nonmoving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)(nonmoving party must present specific, significant probative evidence, not simply “some metaphysical doubt.”). *See also* Fed. R. Civ. P. 56 (e). Conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253 (1986); T. W. Elec. Service Inc. v. Pacific Electrical Contractors Association, 809 F.2d 626, 630 (9th Cir. 1987).

The determination of the existence of a material fact is often a close question. The court must consider the substantive evidentiary burden that the nonmoving party must meet at trial, e.g. the preponderance of the evidence in most civil cases. Anderson, 477 U.S. at 254; T.W. Elec. Service Inc., 809 F.2d at 630. The court must resolve any factual dispute or controversy in favor of the nonmoving party only when the facts specifically attested by the party contradicts facts specifically attested by the moving party. *Id.*

The nonmoving party may not merely state that it will discredit the moving party’s evidence at trial, in hopes that evidence can be developed at trial to support the claim. T.W. Elec. Service Inc., 809 F.2d at 630.(relying on Anderson, *supra*). Conclusory, nonspecific statements in affidavits are not sufficient, and “missing facts” will not be “presumed.” Lujan v.

1 National Wildlife Federation, 497 U.S. 871, 888-89 (1990).

2 In addition, the court is mindful that an action for injunctive relief focuses on whether  
3 the combined acts or omissions of state officials violate a constitutional right or duty owed the  
4 plaintiff. In contrast, when a plaintiff seeks to hold a defendant personally liable the inquiry into  
5 causation is more specific and focuses on that persons specific actions. Leer v. Murphy, 844 F.  
6 2d. 628, 632 (9th Cir. 1988).

### 7 DISCUSSION

8 The plaintiffs' reliance on Turay is misplaced. The holdings do not equate to findings of  
9 liability for damages against any named defendant because of the difference in standards of  
10 proof between actions for injunctive relief and actions for damages. This difference was briefed  
11 by defendants who stated:

12 As Judge Leighton explained in a similar case: "Turay has no talismanic  
13 quality, the mere invocation of which conjures a cause of action." Hoisington, et  
14 al. v. Seling, et al., No. C01-5228-RBL, October 28, 2003, Order at 6 (dkt. #  
15 189). Turay is of assistance to plaintiffs in this case only if (1) they are able to  
16 identify a specific ruling from Turay that, for qualified immunity purposes, was  
17 sufficient to put defendants on notice that their conduct potentially violated  
18 plaintiffs' constitutional rights; or (2) they can point to a specific factual finding  
19 from Turay that could apply by way of collateral estoppel. In either case, each  
20 plaintiff must first show how a specific ruling or finding from Turay applies to his  
21 situation and establishes a violation of his constitutional rights. In doing so, each  
22 plaintiff must be aware that relief ordered in Turay does not represent the  
23 constitutional minimum. *See Sharp v. Weston*, 233 F.3d 1166, 1173 (9th Cir.  
24 2000) ("A court may order 'relief that the Constitution would not of its own  
25 force initially require if such relief is necessary to remedy a constitutional  
26 violation.'"). In Sharp, the Ninth Circuit specifically noted that Judge Dwyer's  
27 findings in Turay did not imply the existence of constitutional rights. Thus, for  
28 example, Judge Dwyer's order that SCC provide residents private visitation  
rooms and educational opportunities did not mean that the residents had a  
constitutional entitlement to those things. *Id.*

(Dkt. # 229, pages 21 and 22).

23 The defendants filed a separate motion for summary judgment for each plaintiff that sets  
24 forth the treatment provided or available to that person and that persons factual history. The  
25 summary judgement standard requires a plaintiff to "present specific, significant probative  
26 evidence." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

1 Mr. Young was informed of the summary judgment standard. (Dkt. # 195). The court  
2 specifically informed plaintiff that if the opposing party moved for summary judgment he would  
3 need to:

4 **[s]et out specific facts in declarations, deposition, answers to**  
5 **interrogatories, or authenticated documents, as provided in Rule 56(e), that**  
6 **contradict the facts shown in the defendant's declarations and documents**  
7 **and show that there is a genuine issue of material fact for trial. If you do**  
8 **not submit your own evidence in opposition, summary judgment , if**  
9 **appropriate, may be entered against you. If summary judgment is granted,**  
10 **your case will be dismissed and there will be no trial. Rand v. Rowland, 154**  
11 **F.3d 952, 962-963 (9th Cir. 1998)(emphasis added).**

12 (Dkt. # 195). (emphasis in original order). Mr. Young has failed to come forward with any  
13 evidence to show that any right or duty owed to him has been violated by any named defendant.  
14 His allegations in the complaint are unsupported by any evidence that shows he has suffered any  
15 constitutional injury.

16 Plaintiff complains about a number of issues without providing any evidence to show  
17 any named defendant played any part in the alleged conduct. (Dkt. # 408). He complains of his  
18 housing assignment, the type of treatment available, and contact with Department of  
19 Corrections personnel. With regard to mental health treatment, plaintiff refuses treatment, but  
20 defendants have placed the expert testimony of a mental health care provider before the court  
21 indicating the treatment provides a chance for plaintiff to better his mental condition and  
22 plaintiff has not contradicted that assertion in any meaningful way. Further, plaintiff has not  
23 shown any constitutional violation regarding the conduct of any named defendant.

24 While he complains of his conditions he has not shown either personal participation or  
25 injury. The same analysis is true for the remaining claims. There is simply no evidence that  
26 implicates any named defendant. Defendants are entitled to summary judgment based on this  
27 plaintiffs lack of evidence that he was subjected to any unconstitutional condition attributable to  
28 the actions of any named defendant. The defendants are entitled to summary judgement as a  
matter of law.

#### CONCLUSION

1 Defendants are entitled to summary judgment as plaintiff has failed to show a  
2 any injury. Defendants motion for summary judgment should be **GRANTED**. A proposed order  
3 and proposed judgment accompanies this Report and Recommendation.

4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
5 Procedure, the parties shall have ten (10) days from service of this Report to file written  
6 objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those  
7 objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the  
8 time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on  
9 **July 14<sup>th</sup>, 2006**, as noted in the caption.

10 DATED this 14<sup>th</sup> day of June, 2006.  
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16 Karen L. Strombom  
17 United States Magistrate Judge  
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